

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES*

February 28, 2006

6:30 P.M.

Public Safety Building Conference Room

Members Present: Nick Iannone, Jim Rockis, Bernie Bossio, Mark Furfari and Jim Shaffer.

Members Absent: NONE.

Staff Present: Chris Fletcher, Planning Director.

MATTERS OF BUSINESS:

Motion to approve the minutes of February 1, 2006, as amended, by Rockis, second by Bossio.
Motion carried unanimously.

OLD BUSINESS: NONE.

NEW BUSINESS:

1. **CU06-02 / Ohlinger / 318 Richwood Avenue:** Request by Marion Ohlinger for conditional use approval of a “Restaurant, Private Wine” establishment at 318 Richwood Avenue. Tax Map #29, Parcel #120; a B-1 District.

Fletcher read the Staff report stating that the zoning classification for the subject parcel was changed from R-1-A to B-1 under the January 03, 2006 ordinance amendment to accommodate higher and better uses for the existing structure. Table 300.05.01 of the Zoning Ordinance provides that “Restaurant, Private Wine” establishments are considered conditional uses in the B-1 District. As such, Mr. Ohlinger must obtain conditional use approval from the BZA prior to offering food and wine within his existing art gallery establishment (“Solera”).

The following table identifies additional standards that must be met for the proposed use.

Criteria	Standard	Existing/Proposed Conditions	Compliance Threshold
Off-street parking Table 104.04.01	1 space per 100 ft ² of eating area plus 1 space per employee	<ul style="list-style-type: none">• 1,670 ft² of eating area• 4 employees	21 parking stalls

Mr. Ohlinger submitted a parking detail that meets the design standards of Graphic 401.10.02 resulting in 29 off-street parking stalls, which exceeds the minimum standard. Referring to the parking detail illustration on the last page, Fletcher clarified that the top parking lot is designed to accommodate 45° parking and the lower two parking tiers at 60°. The purpose of using 45° parking on the top level is to ensure that vehicle maneuvering occurs entirely on the parcel and avoids backing out onto the public roadway.

Fletcher explained that Staff received a call from Renee Johnson, representing her mother Martha White who resides at 491 Forest Avenue, stating that they were unable to attend the BZA meeting but wished to express concerns of an existing water run-off problem from the subject property. She stated that they are not opposed to the proposed conditional use but wish to work with the property owner to resolve the run-off issue. She alleged that surface run-off flows from the subject property onto the 491 Forest Avenue property in a way that has caused damage. Staff agreed to facilitate initial discussions between the property owners, but does not recommend that the conditional use be denied or delayed because of the issues raised.

Iannone advised that the applicant is not the owner of the property and this would need to be referenced back to the property owner.

Fletcher noted that Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Further, Staff recommended that the BZA approve the request by finding in the positive of each findings of fact as submitted by the applicant, with suggested revisions, and contingent upon the following conditions:

1. That the applicant stripe the parking areas as illustrated on the submitted parking lot detail to ensure that vehicular maneuvering occurs outside of the public roadway as follows:
 - a. Upper parking area – 45 degree angled parking resulting in no more than six (6) stalls;
 - b. Middle parking area – 60 degree angled parking resulting in approximately eleven (11) stalls;
 - c. Lower parking area – 60 degree angled parking resulting in approximately twelve (12) stalls.
2. That the applicant maintain compliance with the supplemental land use regulations for “Restaurant, Private Wine” establishments provided in 300.06 (18) of the Zoning Ordinance.
3. That the applicant obtains permitting as a “restaurant” from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.

Mr. Ohlinger had no comments to add to the Staff report.

J. Rockis asked him to expound on what he is trying to do there and if he has been in the restaurant business before.

Mr. Ohlinger responded that it will be a small café to seat about 35 people with a Latin theme and Spanish/South American cuisine. He has been in the restaurant and catering business for a number of years.

There was a discussion about business procedure for the meetings.

N. Iannone asked for public comments. There being none, the public portion was closed.

Furfari noted that he would have to abstain from the discussion and voting on the agenda item because he is Mr. Ohlinger’s current employer.

Fletcher individually read each Finding of Fact, the applicant's corresponding response, and the Staff recommendation.

Rockis commented that the parking detail submitted by the applicant did not include landscaping.

Fletcher advised that the existing parking area already buffered by a natural, densely wooded area surrounding nearly the entire area.

Rockis inquired about when it is a different use of property in relation to what is already there, will they accept a parking lot "as is", in the future.

Bossio inquired whether changing the parking stall configuration required compliance with landscaping provisions.

There was lengthy discussion about consistency, setting precedents, parking, and landscaping.

Fletcher clarified that the stated intent of landscaping in the zoning ordinance was to buffer non-compatible uses and soften newly developed or expanded parking areas. He stated that it was staff's opinion that because the non-residential use is currently buffered from contiguous residential uses by the wooded area and that the parking lot is an existing facility with no proposals at this time to expand, landscaping provisions were not required. He noted that the parking area is considered a legal, pre-existing nonconforming use. The applicant proposes to use the area under its existing condition. Fletcher noted that if the parking area was to be expanded, then landscaping requirements would have to be met. Simply identifying the manner in which parking stalls will be configured on a lot that is not currently striped does not, in his opinion, constitute a functional change or expansion of the parking facility.

Fletcher stressed that consistency is and will remain a benchmark for the Planning Department. He noted that, although precedent supports consistency, each case must be reviewed based on its unique conditions.

Bossio asked if landscaping could be incorporated into the Finding of Fact questions and if benchmarks could be set.

Fletcher explained that compliance thresholds are clear in the ordinance and did not recommend revising findings of fact to accommodate landscaping provisions. He also noted that landscaping would normally become an issue before the BZA only if an applicant sought relief for the landscaping requirements.

After discussion on each of the applicant's responses, the following findings of fact were unanimously [Fufari abstaining] found in the positive, as revised.

Finding of Fact #1Found in the POSITIVE as submitted by the applicant.

Finding of Fact #2Found in the POSITIVE as submitted by the applicant with the addition of noting that the applicant must comply with occupancy capacities restrictions determined by the City Fire Marshall.

Finding of Fact #3Found in the POSITIVE as submitted by the applicant.

Finding of Fact #4Found in the POSITIVE as submitted by the applicant.

Finding of Fact #5Found in the POSITIVE as submitted by the applicant with the addition of noting that the applicant's parking detail exceeds the minimum off-street parking requirements, the applicant has agreed to maintain the minimum number of parking stalls, and the proposed use preserves the integrity of the neighborhood.

Finding of Fact #6Found in the POSITIVE as submitted by the applicant.

Finding of Fact #7Found in the POSITIVE as submitted by the applicant with the addition of noting that the applicant has improved the property by renovating the structure and cleaning up the area.

Finding of Fact #8Found in the POSITIVE as submitted by the applicant with the addition that the subject parcel was changed from R-1-A to B-1 under the January 03, 2006 zoning ordinance amendment to accommodate higher and better uses; and the proposed conditional use appears to meet policy objectives of this reclassification.

Motion to approve the request with Staff recommended conditions by Bossio, second by Rockis.
Motion carried unanimously.

OTHER BUSINESS:

Public Comments: NONE.

Staff Comments: NONE.

ADJOURNMENT

*** Recorded only on audiotape.**